

REMARKS

Claims 1-10, 14-16, 23-45, 49-51, 58-81, 84-98, 100, 102-112, 115-129, 131, 133-153 are pending. Claims 11-13, 17-22, 46-48, 52-57, 82, 83, 99, 101, 113, 114, 130 and 132 were previously withdrawn. Of the withdrawn claims, claims 11-13, 17-22, 46-48, 82, 83, 99 and 101 are amended. Of the pending claims, claims 1-10, 14-16, 23-35, 71-81, 84-98, and 100 are amended.

In the Restriction Requirement, the Examiner identified three inventions, which are characterized as follows: (1) Group I, encompassing claims 1-10, 14-16, 23-35, 71-81, 84-98 and 100, drawn to a method of reducing excess capacity in a business, (2) Group II, encompassing claims 36-45, 49-51, 58-70, 102-112, 115-129, and 131, drawn to a system for auctioning, and (3) Group III, encompassing claims 133-153, drawn to a website for offering items for immediate sale. The criteria for a proper restriction requirement have not been met. The Examiner has not shown the inventions are distinct, nor has the Examiner shown that the search and examination of the entire application would cause a serious burden on the Examiner. In fact, the evidence is to the contrary.

The Groups are not Distinct

Applicant respectfully submits that the subject matter of Groups I, II and III are sufficiently related that a thorough search and examination of any one claim set would necessarily encompass the search and examination of the remaining claims. Both claims 1 and 36 recite essentially similar claim elements, the main difference being that one is a means plus function format and one recites carrying out method steps. As far as the argument that one can be performed by hand, this is moot. The claims have been amended to recite that both are computer implemented.

With respect to Group III, claim 133 includes essentially the same claim elements as claims 1 and 36 of Group I and II, respectively, and adds an element. If claims 1 and 36 are allowable, claim 133 should be allowable as well. Furthermore, dependent claims 9 and 44 of Group I and II, respectively, recite the additional element from claim 133 (instant purchase features). Thus, claims 9 and 44 link Group I and II to Group III.

Moreover, the search and examination of the entire application can, and in fact has been conducted, without serious burden. MPEP § 803 clearly states that “[i]f the search and examination of the entire application can be made without serious burden, the

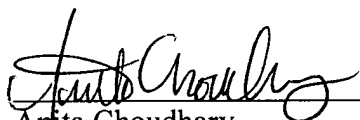
examiner *must* examine it on its merits, even though it includes claims to distinct or independent inventions” (*emphasis added*). This policy should apply in the present application in order to avoid unnecessary delay and expense to applicant and duplicative examination by the U.S. Patent and Trademark Office.

The current Examiner and the former Examiner both examined all the pending claims of Group I, II and III without needing a restriction requirement. The claims of Group I, II and III have been examined together in the First Office Action of 11/24/2002, the Final Office Action of 9/9/2003, the Non-Final Office Action of 3/15/2004, the Non-Final Office Action of 11/17/2004, and the Final Office Action of 4/27/05. At this point, the restriction requirement is needlessly delaying prosecution on the claims that have repeatedly been examined together in multiple previous office actions. Moreover, Applicant has already paid significant fees for these claims to be examined.

Accordingly, it is strenuously urged that the Restriction Requirement be withdrawn. Nevertheless, to the extent it is not, Applicant provisionally elects, with traverse, the claims of Group III (claims 133-153).

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Respectfully submitted,


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